

MINUTES – BOARD OF ASSESSORS MEETING, 3/14/05

In attendance: **Board of Assessors:** Denis O'Regan, Chair; Walt Borders, Brooke Bovard, Jane Frantz, Tom Frantz, Larry Walker, Laura Wallace.

Denis O'Regan called the meeting to order at 7:30 p.m.

Minutes: The minutes from our meeting on February 28 were unanimously approved.

Next, Denis reported on his presentation of the Board of Assessors' budget recommendation at the Advisory Committee meeting on March 7, 2005. Denis said there was strong opposition at Advisory to the budget line item for outside legal counsel, primarily from Aaron Hamburger, Trustee, and Steven Threefoot, Town Assembly Chair. Aaron and Steven apparently felt that the Board of Assessors should use the "Town's attorney" (Ted Rosenthal of Rosenthal, Monhait, Gross & Goddess, P.A.). There was some discussion, but, in the end, Denis told the Advisory Committee that the budget vote by the Board had been unanimous, and we will be putting in that line item. Larry Walker, who was not present for the Board's vote on February 28th, said that he feels this budget line item is not an appropriate use of town funds. Larry said that he, too, is concerned about the inappropriate action of one of the Trustees, who went to the Town's attorney and had him change his opinion regarding last November's referendum. Larry said he doesn't know what the Trustees did about it, and he doesn't know if Rosenthal has been spoken to about it, but he would still vote against this use of funds. Instead, he suggested that the Board ask the Trustees to get Rosenthal to consider the two different opinions and get a written explanation. Tom Frantz said that this incident set a bad precedent; that the opinion which is now in place was arrived at under questionable circumstances and because it was left unchallenged, it is the governing opinion. Denis said that it is logical to think that there will be circumstances where the Trustees' position will be in opposition to that of the Town or the Assessors. In such cases, how can one firm, or one lawyer, be expected to represent all the parties? Walt Borders felt that Rosenthal has shown he can't be trusted to act impartially; that he can be influenced by a Trustee; and his own actions have disqualified him. He also felt it might help to clarify Rosenthal's thinking if he knew his opinions would be facing review,

or even opposition, from another lawyer. Brooke reiterated her concern that the Board should look to other committees to build the need for legal advice. She felt that getting support from other committees would make this easier to sell, although she agreed that the need exists and an alternative opinion would be useful. Denis felt there is a need for the Assessors to have legal counsel without Trustee involvement. Tom said the Assessors are not like other committees and that the idea is to get the Assessors a real budget. Jane Frantz said that we are a Board, not a committee; the issues the Assessors deal with are not like the issues facing any other committee. We are selected by a special voting method and required to swear an oath upon taking office. The Trustees and the Board of Assessors are the only governmental entities in the Ardens to have been sued; we need solid legal advice we can count on. Jane feels there is an inherent conflict of interest when one firm represents different governmental bodies in one small community. Denis pointed out that next year's Assessors may decide not to use the budget, but they should at least have the option. Tom agreed with Denis and said this could be the best or worst thing we've done for the Assessors, but we should give them the choice. Laura said that if this budget item provokes a discussion that would be a good thing; we need to have that kind of discussion as a community. Larry said he would support getting outside real estate advice. Tom felt we should not limit the item to just real estate advice or legal advice. Brooke suggested using a broader term like "professional advice." Tom said that as Budget Committee Chair he needs a paragraph to explain changes in budget line items. Denis suggested we take a quick vote on language. Jane suggested the following language for a **motion** explaining the budget request: **"The Board of Assessors requests \$2,500 a year for the next three years for professional guidance, including legal or other advice, to be used in assisting the Board in fulfilling its responsibility to determine the full rental value of leasehold land in Arden."** (Note: The actual budget line item will be for \$2,600: \$2,500 for professional guidance and \$100 for mailing costs for public hearing notices.) Walt said he liked the language of the motion and called for a vote. **A vote was taken; the motion passed unanimously.**

The next agenda item was a discussion of domiciles. Denis said that his impression from our previous discussions is that this Board is not going to shake things up this year, including the way we handle domiciles. He also wanted the Board to know that the Trustees are moving forward with a blanket issuance to "normalize" or "legalize" all the currently non-conforming uses in town. Denis said that with the swipe of a pen the

Trustees are greatly improving the property values of some of the leaseholds. Tom wondered why only some leaseholds will be allowed to “legalize” their illegal uses; why shouldn’t all of us have the right to do that? Brooke wondered if it is going to change our approach to an assessment regarding whether a domicile is conforming or non-conforming. Denis said that since the Trustees’ action will definitely enhance the value of certain leaseholds, one possibility might be to add an “enhanced value” factor. Jane said that the rationale behind the B rate (covering multiple domiciles) is to charge for the privilege, not for the domiciles themselves. But, since charging for either the privilege or for the domiciles was called into question by the *Ardencroft v Troyan* case, we probably need legal advice before we add a factor or even continue using the B rate at all. Tom said that two years ago when he served on the 2003 Board, the B rate was changed, so do we continue using the current rate, or do we go back to the rate before it was changed? Brooke wanted to know how many leaseholds are affected by the B rate. Jane thought that approximately 50 leaseholds have multiple domiciles. Tom said that the B rate represents about 2% of total land rent. Denis asked if we have a consensus regarding domiciles. Jane suggested that we leave domiciles alone for next year but include a statement of our concerns regarding the pending action by the Trustees and the issues raised in the *Ardencroft* case in our report to the Town.

Denis called for the next agenda item, which was the Green Book. Specifically, we were going to consider how to handle summaries, essays, op-eds and opinion pieces that are often attached to items we wish to include in the Green Book. At the previous meeting, the Board was concerned that including such attachments in the Green Book could be interpreted as tacit approval or even adoption of the stated opinions. Brooke suggested that we start an appendix section and put all the op-eds and opinions in there. The Board felt that an Appendix was a good idea and adopted that suggestion. Denis felt strongly that we should try to make maintaining the Green Book by future Boards the will of town and asked how we can accomplish that. Larry agreed that keeping the Green Book is a good idea. He said that previously this information was not organized and presented; it was just a stack of papers. Denis said he will check with Steven Threefoot to see how we can make it a requirement that the Green Book be kept by future Boards.

The last agenda item was the next letter to the Arden Page. Denis said he is in the early stages of writing this article which will deal with issues of reality

versus ideology concerning the discussion we've had about the budget line item. Walt agreed with moving forward with this article due to the constitutional ramifications for the town given that a Trustee clearly breached her role. Walt felt this one incident pointed out the problem we often have determining official roles and also what often goes on behind the scenes. Larry agreed this article would be a good subject for discussion. Tom felt it was only fair to give the Trustee in question a heads-up because no one likes to be blindsided, but, more importantly, because this is not a personal issue but rather a matter of checks and balances in town government. Jane agreed with giving the Trustee a heads-up to avoid having the article viewed as some sort of personal attack, which it is not. However, the problem caused by this Trustee clearly demonstrates the need for different "branches" of Arden government to be able to act independently. Denis said he would let the Trustee know that this article is coming out in the next issue of the Page.

The meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Jane Frantz
Secretary, Board of Assessors